

## WEST LOUISVILLE FOODPORT DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of March 22, 2016 by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through **LOUISVILLE FORWARD**, with an office located at 444 S. Fifth St., Suite 600, Louisville, Kentucky 40202 ("Metro") and **SEED CAPITAL KENTUCKY, INC.**, a Kentucky non-profit corporation, with its principal office at 200 York St., Louisville, Kentucky 40203 ("Developer").

### RECITALS

**WHEREAS**, Metro owns property located in Louisville, Kentucky as more particularly described in Exhibit A attached hereto ("Property"); and

**WHEREAS**, Metro and Developer entered into an Option Agreement dated September 15, 2014 ("Option Agreement"); and

**WHEREAS**, Metro supports Developer's plans to use the Property for the development of the West Louisville FoodPort, a multi-tenant, mixed-use development dedicated to the growing, aggregation, distribution, processing and storage of food to support the local and regional food system, and related activities ("Project"); and

**WHEREAS**, Metro and Developer have identified a substantial demand for local food through the 2012 Local Food Demand Study (the "Study"), and agree that the Project can address at least a portion of the unmet demand identified in the Study by creating a market for agricultural products, including seconds, at a scale that can support the institutional use of local food, increased consumer opportunities to purchase local food, and job creation associated with the growing, aggregation, distribution and processing of local food, and therefore wish to jointly support the Project; and

**WHEREAS**, Metro understands that the Property will be conveyed for One and No/100 Dollars (\$1.00), but that the Project, which will be located in west Louisville, an area that generally suffers from many decades of disinvestment, will create jobs, revitalize the Property, enhance the tax base of Louisville, result in the construction of a building or buildings of architectural significance, provide substantial public open space for active and passive recreation and education, and further Metro's public purposes, and Metro is therefore willing to sell the Property, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Section 20 of the Option Agreement, attached as Exhibit D hereto, Metro and Developer are required to enter into a Development Agreement establishing the terms and conditions for the development of the Property by Developer as a condition precedent to closing on the sale of the Property; and

**WHEREAS**, Developer has spent and has provided receipts or other evidence documenting the expenditure of at least \$1.5 million on the following work:

- Developing the site design for the Property in partnership with its Project Partners (as that term is defined in the Option Agreement);

- Performing an environmental site assessment using a qualified environmental professional, detailing the nature and extent of any contamination on the Property and any remediation required;
- Receiving written advice from Louisville Metro Government's Develop Louisville staff on the appropriate zoning designation for all anticipated uses associated with the Project;
- Engaging a world-class team of architects, engineers and landscape designers to plan a Project that has already received national and international acclaim;
- Attracting additional Project Partners including Jefferson County Cooperative Extension Service, Piazza Produce, Just One Organics, The Weekly Juicery, Farmed Here and The Nature Conservancy;
- Working continuously to attract additional Project Partners;
- Forming a Community Council, made up of nearly 80 members from neighborhoods surrounding the Property and from the community at large, which has met at least monthly since January 2015 to review and discuss the Project;
- Forming three working groups of the Community Council focused on workforce development, community benefits, and outreach/communications;
- Hosting and participating in public meetings in west Louisville to address community questions and concerns;
- Raising funds totaling \$3,850,000.00 and receiving funding commitments from donors, banks and lenders totaling \$10,000,000.00; and
- Engaging business planning consultants, community engagement consultants, owner's representatives, and construction managers to prepare for construction of the Project; and

**WHEREAS**, Metro has complied with its obligation under the Option Agreement to have the Property declared surplus by the Legislative council of the Louisville/Jefferson County Metro Government.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

## **ARTICLE I**

### **COVENANTS AND UNDERTAKINGS OF DEVELOPER**

**Section 1.01. Construction of Project.** Developer agrees, at its sole expense, to construct the Project upon the Property in accordance with the terms and conditions of this Agreement and in accordance with the terms and conditions of the Option Agreement. The Project shall consist of Phase I as described in Section 1.02 of this Agreement and future phases as described in Section 1.03 of this Agreement.

**Section 1.02. Design and Phases.** Phase I of the Project shall be substantially similar to the plans attached hereto as Exhibit B ("Phase I Schematic Design Plan"). The Phase I Schematic Design Plan meets the definition of "site plan" under Section 21(a) of the Option

Agreement. The term "Phase I," when used in this Agreement, shall mean a building or group of buildings serving Project Partners. Phase I will include (i) site development and (ii) the construction of a building or series of interconnected buildings containing 125,000 square feet of enclosed space to serve Project Partners and (iii) the construction of open space available for public markets, a demonstration farm, public gatherings, and recreation. The estimated cost of Phase I is approximately \$31,000,000.00, including amounts already spent by Developer.

**Section 1.03. Future Development.** Developer will continue to develop the Property in an additional phase or phases, with each phase to receive a minimum investment of \$5 million in accordance with the schedule developed in Section 1.04D. below.

**Section 1.04. Schedule and Construction: Term of this Agreement.**

A. Developer acknowledges that time is of the essence and agrees to adhere to the schedule set forth in subsection B. of this Section (the "Schedule") for Phase I and to develop a similar schedule for subsequent phases of the Project (the "Future Schedule"). So long as Developer is in substantial compliance with the Schedule and Future Schedule and subject to delays caused by force majeure as provided in Section 3.06, this Agreement shall remain in effect and Developer shall have the exclusive right to develop the Property according to the terms of this Agreement.

B. Developer shall use its best efforts to comply with the following Schedule for Phase I:

<u>Phase I</u>	<u>Date</u>
Obtain all permits required to commence construction of Phase I	December 31, 2016
Commence construction of Phase I	December 31, 2016
Substantial completion of Phase I	May 1, 2018

C. For all subsequent phases of the Project, Developer and Metro shall agree to a Future Schedule which shall be incorporated into this Agreement as an addendum executed by all parties hereto.

D. Metro is committed to the development of the entire Property for the Project. This Agreement shall remain in effect until the earlier of December 31, 2020, or Project Completion (as that term is defined below), provided that Developer is not in default of any material provisions. In the event Project Completion has not occurred by December 31, 2020, this Agreement shall automatically be extended as follows:

1. Provided that Developer completes Phase I in accordance with the terms and conditions of this Agreement, this Agreement shall automatically be extended for an additional five (5) years until December 31, 2025 ("First Extension Period").

2. If either before or during the First Extension Period, Developer or a Project Partner constructs an additional phase or phases with an investment of no less than \$5 million dollars (\$5,000,000) (adjusted according to the Consumer Price Index),

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then this Agreement shall automatically be extended for an additional five (5) year period until December 31, 2030 ("Second Extension Period").

3. If at the end of the Second Extension Period, Developer or a Project Partner has constructed an additional phase or phases of the Project with an investment of no less than \$5 million dollars (\$5,000,000) (adjusted according to the Consumer Price Index), then this Agreement shall continue for an additional five (5) year period until December 31, 2035.

The above-described process of investment and extension shall continue as described above until "Project Completion," which shall be defined as the satisfaction of one (1) of the following two (2) conditions:

(i) the entire Project has been developed for the Project by Developer and/or its Project Partners; or

(ii)(a) at least eighty percent (80%) of the Property (i.e. 19 of the 24 acres constituting the Property) has been developed by Developer and/or its Project Partners; and

(b) the total investment in the Project satisfies the criteria described above in this Section 1.04D.

4. Developer shall provide receipts or other evidence to Metro through Louisville Forward to document total investment in each Phase of the Project. Receipts or other evidence shall be provided at least quarterly during Project construction.

E. All construction at the Project shall be in a good and workmanlike manner. Developer shall verify that all construction on the Project shall be in accordance with the plans and renderings prepared pursuant to Article I of this Agreement.

F. Any provision of the Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project by reasons of force majeure as provided in Section 3.06, or another cause which Metro and Developer agree is reasonably justifiable, the date of completion of construction shall be extended by Metro as provided in Section 3.06.

G. Metro, its agents and employees, shall be granted a right of entry upon the Property during construction during normal business hours after twenty-four (24) hours prior notice to enable Metro to inspect the construction of the Project through the course of construction, although Metro shall have no obligation to do so unless otherwise required by law.

#### **Section 1.05. Design and Approval.**

A. Developer shall obtain Metro's approval for any material changes to the Phase I Schematic Design Plan ("Amended Phase I Plans") and Developer shall submit these Amended Phase I Plans to the Planning Commission, Board of Zoning Adjustment or other administrative body to the extent such changes require additional approvals.

Developer shall also provide Metro's Develop Louisville staff with final architectural renderings for Phase I ("Project Renderings"), and shall receive written approval of such Project Renderings from Metro prior to seeking construction approvals. Metro, exclusive of the time needed for any review required by an administrative body, shall have a period of not more than ten (10) business days from Metro's receipt of the Amended Phase I Plans and Project Renderings to review and approve or disapprove in writing the Amended Phase I Plans or Project Renderings. Metro shall not unreasonably withhold such approval. If Metro requires changes to the Amended Phase I Plans or Project Renderings, Developer shall have ten (10) business days from Developer's receipt of any such requested changes to make such changes and return the revised Amended Phase I Plans or Project Renderings to Metro, and Metro shall then have ten (10) business days to again approve or disapprove the revised Amended Phase I Plans or Project Renderings, not including the time required for any required administrative body review. Upon obtaining Metro's approval of, as applicable, the Amended Phase I Plans or Project Renderings, Developer shall prepare the final construction plans (the "Phase I Construction Plans") which will be substantially in compliance with, as applicable, the Amended Phase I Plan and Project Renderings. Before obtaining the necessary permits to begin construction of Phase I of the Project, Developer shall provide Metro's Office of Construction Review or its successor with a copy of the Phase I Construction Plans for review for conformance with, as applicable, the Amended Phase I Plan and Project Renderings, the Kentucky Building Code, and any other applicable state or local codes and regulations governing building construction.

**B.** For future phases of the Project, Developer shall cause preliminary plans (including construction plans) ("Future Preliminary Plans"), and final architectural renderings ("Future Renderings") to be prepared on a phase-by-phase basis before applying for permits and approvals necessary to begin construction on such applicable phase. The Future Phase Preliminary Plans and Future Renderings shall be sufficient in detail to enable Metro to determine whether the design of the phase, including size, scope, massing and exterior images, will be consistent with good architectural practice and appropriate urban design principles and shall submit the Future Phase Preliminary Plans and Future Renderings for Metro approval. Metro and Developer agree that the procedure and time periods set forth in Section 1.05A, above shall apply to the approval of all Future Phase Preliminary Plans and Future Renderings.

**C.** All Amended Phase I Plans, Project Renderings, Phase I Construction Plans, Future Preliminary Plans, and Future Renderings (collectively, the "Work") are and shall remain the sole and exclusive property of Developer, and by entering into this Agreement Metro is not acquiring any license, property right, or other legal or equitable interest in the Work and Metro may not copy, distribute or use the Work in any way without the express written consent of Developer, except to the extent that Metro is obligated to meet the requirements of the Kentucky Open Records Act.



**Section 1.06. Labor Requirements.** Developer shall require the contractors constructing the Project to use their best efforts to hire 20% minority, 5% female and 1/2% disabled subcontractors and suppliers. In order to demonstrate compliance with this commitment, Developer agrees to provide quarterly reports to the Louisville Metro Human Relations Commission documenting the percentage of minority, female and disabled construction workers and suppliers affiliated with the Project during the term of construction of Phase I and for all subsequent Project phases.

**Section 1.07. Codes.** The construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations.

**Section 1.08. Employment Regulations: Affirmative Action.** Developer, its contractors and subcontractors, shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national origin, sexual orientation or disability. At all times during the construction of the Project, Developer shall take affirmative action to ensure that its employees and the employees of its contractors and subcontractors are treated fairly during employment, without regard to their sex, race, creed, color, national origin, sexual orientation or disability. This requirement shall apply to, but not be limited to, the following: employment; promotion; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training. Notwithstanding anything contained in this Section to the contrary, Metro understands and agrees that Developer is committed to hire, and where possible will hire, individuals residing in west Louisville for work at the Project.

**Section 1.09. Indemnification.** Developer will keep the Property and the Project free and clear of all mechanics' and materialmen's liens and other liens on account of work done for Developer or persons claiming under Developer. Should any such lien be filed against the Property and/or the Project, Developer shall immediately pay, bond over, or otherwise remove such lien. Should Developer elect to dispute the amount required to release such lien or the quality of service provided by the contractor who placed the lien, Developer shall have the right to provide a bond against such lien in form and content accepted in writing by Metro.

**Section 1.10. Non-Discrimination.** Upon completion of the Project and as applicable, Developer agrees to abide by all fair housing laws, and will not discriminate on the basis of race, sex, creed, disability, sexual orientation or national origin, in the sale lease, rental use or occupancy of the commercial units on the Property.

**Section 1.11. Insurance.** Developer shall provide all insurance as required by Metro's Risk Management Department as is more particularly described in Exhibit C, attached hereto and made a part hereof.

**Section 1.12. Security.** Developer agrees to furnish reasonable and customary security for the construction work site, or sites, located on the Property during each construction phase.

**Section 1.13. Developer Financing.** Before beginning construction on Phase I and/or any future phases of the Project, Developer shall furnish to Metro written evidence of firm financing commitments for such phase before beginning construction.

**Section 1.14. Indemnification.** Developer agrees to indemnify and hold harmless and defend Metro and its elected and appointed officials, officers, employees and agents and successors (“Metro Parties”) harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liability, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable attorneys’ fees) imposed upon or incurred by the Metro Parties as a result of or in connection with any of the following:

A. Any misrepresentation or breach of warranty made by Developer in this Agreement or in any agreement or instrument executed by it in connection herewith or pursuant hereto.

B. The breach of or default in the performance of any covenant, agreement or obligation to be performed by Developer pursuant to this Agreement or any agreement or instrument executed by it in connection herewith or pursuant thereto, or

C. Any claim, damage, loss or expenses, attributable to bodily or personal injury or to destruction or loss of use of property, including, but not limited to, liability expenses or damages (determined to have been caused by Developer and not pre-existing or caused by the negligent act or omission of the Metro Parties acting within the course and scope of their employment), that is directly or indirectly attributable to or results from the presence or release of any Hazardous Materials (as that term is defined in the Option Agreement) or that arises directly or indirectly from the performance of the agreement or negligent or intentional act or omission of Developer or its agents, contractors, employees, licensee, or invitees, in carrying out its obligations under this Agreement.

**Section 1.15. Environmental Testing and Remediation.** Developer, at its expense, shall be solely responsible for performing any Environmental Testing (as that term is defined in the Option Agreement) to determine whether Hazardous Materials (as that term is defined in the Option Agreement) are present in, on, or under the Property and, at its expense, to conduct any remedial measures or management of the Hazardous Materials disclosed by the Environmental Testing as may be required by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet or other local, state or federal agency.

**Section 1.16. Additional Representations and Covenants of Developer.** Developer represents and covenants as follows:

A. Developer is a Kentucky non-profit corporation, duly formed and validly existing under the laws of the Commonwealth of Kentucky with the power and authority to enter into this Agreement.

B. Developer is not a “foreign person” as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations.

C. The execution of this Agreement, and the construction of the Project by Developer will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to Developer.

D. There are no actions, suits or proceedings pending or threatened against Developer which would, if adversely determined, affect Developer's ability to enter into this Agreement or construct the development in accordance with this Agreement.

## **ARTICLE II**

### **COVENANTS AND UNDERTAKINGS OF METRO**

**Section 2.01. Sale of Property, Purchase Price.** Subject to the satisfaction of conditions set forth in Section 2.03 and the Option Agreement, Metro agrees to convey the Property to Developer for the Purchase Price as defined in the Option Agreement in an "as is" condition by a special warranty deed (the "Deed").

**Section 2.02. Addition Representations, Covenants and Agreements of Metro.** Metro represents and covenants as follows:

A. Metro is a Kentucky Consolidated Local Government established pursuant to KRS 67C and possesses the requisite authority to enter into this Agreement.

B. Metro has not made any untrue statement of a material fact or failed to state a material fact in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms hereof.

C. Metro agrees to use reasonable efforts to assist Developer in coordinating the work of various governmental entities and utilities with respect to servicing and permitting the Project and use of the Property.

#### **Section 2.03. Closing.**

A. Subject to the satisfaction of the closing conditions set forth in this Section 2.03 and the Option Agreement, the closing of the sale and purchase of the Property (the "Closing") shall occur no later than April 30, 2016, and shall be established by a written notice from Developer to Metro delivered not less than one (1) week prior to the proposed Closing. The Closing shall be held at 444 South Fifth Street, Sixth Floor, Louisville, Kentucky, or at such other place as is mutually agreed to by Developer and Metro.

B. At the Closing Metro shall convey the Property to Developer by the Deed free and clear of all liens and encumbrances except for the Permitted Encumbrances (as that term is defined in the Option Agreement), and a right of reverter as described in the Deed.

C. State, Louisville Metro, and School District property ad valorem taxes assessed against the Property, if any, and payable in the year of Closing, shall be the responsibility of Metro. Metro shall pay the transfer tax, if any, on the conveyance of the Property. Developer shall pay the recording fees imposed for recording the Deed. All utilities and other operating expenses associated with the Property shall be borne by



Metro through the date of Closing. Each party shall bear its own legal and other expenses associated with the transaction.

**Section 2.04 Conditions to Closing.**

**A. Metro Conditions.** Metro shall not close on the sale of the Property unless the following conditions have been met or waived by Metro in whole or in part before the Closing:

1. Developer shall furnish written evidence reasonably acceptable to Metro that financial and/or other institutions are prepared to extend it sufficient capital to construct Phase I of the Project.

2. The Phase I Schematic Design Plan and the Project Renderings for the Property shall be completed and approved by Metro as provided in Article I.

3. The representations and warranties of Developer set forth herein shall be true and correct as of the Closing.

4. Developer shall demonstrate to Metro's reasonable satisfaction that the Project's pre-development approvals, including any approval required by the Louisville Metro Planning Commission or the Cabinet, will be underway within one (1) year of Closing, or that these approvals have been completed.

5. Developer shall have satisfied the other obligations of Developer set forth in the Option Agreement.

**B. Developer Conditions.** Developer shall not be required to close unless the following conditions have been met or waived by Developer in whole or in part before the Closing:

1. The representations and warranties of Metro set forth herein shall be true and correct as of the Closing Date.

2. The Property shall not be threatened or materially adversely affected in any way as a result of earthquake, disaster, labor dispute, any action by the United States or any other governmental authority, riot, civil disturbance, uprising, activity or armed forces or act of God or enemy.

3. Developer shall have obtained, at its sole expense, a title commitment from a title insurance company showing that the Property is owned by Metro in fee simple unencumbered insurable marketable title except for the Permitted Encumbrances and such other exceptions reasonably acceptable to Developer.

4. Metro shall have satisfied the other obligations of Metro set forth in the Option Agreement.

**Section 2.05. Sidewalks.** Metro agrees (i) to request an appropriation of no more than \$350,000 to construct required perimeter sidewalks for the Project, subject to the approval of the Metro Council, and to coordinate the construction of these sidewalks as part of or before the

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completion of any phase of the Project as agreed to by the parties to this Agreement and (ii) that once constructed, except as provided in Louisville Metro Code of Ordinance Section 97.113, Metro will maintain, in compliance with all applicable laws, rules, and regulations, such sidewalks so long as the Property is used for the purposes contemplated by this Agreement and the Option Agreement.

**Section 2.06. Community Benefits Arrangement.** Notwithstanding anything set forth in this Agreement or the Option Agreement, Metro agrees that Developer may, upon completion of the Project, enter into an arrangement through which it agrees to transfer ownership of all or a portion of the Project to community groups. Any such transfer is subject to Metro's prior written approval, which shall not be unreasonably withheld.

### **ARTICLE III** **MISCELLANEOUS**

**Section 3.01. Provisions not Merged with Deeds and Other Agreements.** This Agreement shall not terminate upon the execution of the Deed required by this Agreement, and the provisions of this Agreement shall not be deemed to be merged into the Deed.

**Section 3.02 Governing Law.** This Agreement, the construction thereof and the rights and obligations of the parties hereunder shall be governed in all respects by the laws of the Commonwealth of Kentucky.

**Section 3.03. Severability.** Each and every provision hereof, including Articles, Section, and Subsections shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability or illegality of any such provision shall not affect the enforceability of any other provision hereof.

**Section 3.04. Section Headings and Captions.** The Section headings and captions in this Agreement are for convenience of reference only and shall not affect the construction of the terms and provisions hereof.

**Section 3.05. Time of the Essence; Mutual Extension; Diligent Performance.** Time is of the essence with respect to the duties and obligations imposed on the parties hereto. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of Metro and Developer. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement or performance thereof.

**Section 3.06. Force Majeure.** In the event that Developer shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of the failure of Louisville & Jefferson County Metropolitan Sewer District to grant to Developer all necessary encroachment easements required for the construction of Phase I (the "MSD Delay"), strikes, lock-outs, labor troubles, inability to procure materials which could not have been reasonably anticipated and avoided by Developer, failure of power, riots, insurrection, war or the act, failure to act or default of the other party, then performance of such act shall be extended for a period

equivalent to the period of such delay. Developer shall provide Metro with notice of any such delay in writing no later than thirty (30) days following the delay's commencement.

**Section 3.07. Notices.** Whenever a notice is required or permitted to be given to a party hereunder, such notice shall be in writing and shall be deemed to have been made when hand delivered or two (2) business days after being deposited in the United States mail, certified or registered mail return receipt requested, postage prepaid, addressed to the parties, or to such other address or to such other persons as any party shall have requested by notice to the other(s) pursuant to this Section, as follows:

If to Developer:       Seed Capital Kentucky, Inc.  
200 York Street  
Louisville, KY 40203  
Attn: Caroline Heine  
Phone: 502-386-7288

Copy to:               Stites & Harbison, PLLC  
400 W. Market St., Suite 1800  
Louisville, KY 40202  
Attn: David Saffer  
Phone: 502-681-0547

If to Metro:           Louisville Forward  
Department of Economic Development  
444 South Fifth Street, Suite 600  
Louisville, Kentucky 40202  
Attn: Director  
Phone: 502-574-4140

Copy to:               Jefferson County Attorney  
531 Court Place  
Suite 900  
Louisville, Kentucky 40202  
Attn: John Wilmes  
Phone: 502-574-3348

**Section 3.08. Entirety of Agreement.** This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and all prior agreements and understandings, between Metro and Developer, are merged herein. The Exhibits to this Agreement constitute a material part hereof and are incorporated by reference herein. This Agreement may not be modified, amended or revoked, except in writing, executed by each of the parties.

**Section 3.09. Brokers and Finders: Fees and Expenses.** Each of the parties hereto represents and warrants to the others that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each party indemnifies and holds the other harmless against any claims for fees for such services by any person or firm claiming under or through

such indemnitor. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the parties. Each party hereto is indemnified and holds the others harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor.

**Section 3.10. Successor and Permitted Assigns for the Parties Hereto.** Developer may collaterally assign or pledge its rights under this Agreement, or portions of those rights, as security for loans or guaranties of loans with respect to the Project, without the consent of Metro. Developer may also assign and transfer this Agreement or partial interests in this Agreement (such partial interests being the right to construct portions of the Project) to entities affiliated with Developer through partial common ownership or management, without the consent of Metro; provided, that with respect to actual assignments or transfers (and not collateral assignments or pledges to secure loans), Developer shall notify in writing Metro as to the assignee and as to the portion of the rights assigned or transferred (if less than a full assignment or transfer). Except as permitted in the foregoing sentences, Developer shall not assign or transfer any interests under this Agreement without the prior written consent of Metro.

**Section 3.11. Estoppels.** Each of the parties hereto agrees to provide to the other, or to such third parties as may be reasonably requested by the others, written estoppels from time to time certifying, among other matters, the continued viability of this Agreement, the absence of any defaults hereunder or, if defaults exist, specifying in detail the nature of such defaults), the status of the obligations of the parties each to the other, and such other matters as may reasonably be requested by the party requesting such estoppel certificate(s).

**Section 3.12. No Third Party Beneficiaries; No Partnership or Joint Venture Created.**

Nothing contained in this Agreement shall be deemed or construed as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or other association or relationship among Developer and Metro. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successor and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

**Section 3.13. No Abrogation of Legal Requirements.** Nothing contained herein shall be construed to permit any party to violate any applicable law, regulation or code.

**Section 3.14. Default.**

A. If Developer materially breaches or defaults on its obligations under the Agreement or any of the documents incorporated herein, or in the reasonable judgment of Metro there has been a substantial decrease in Developer's capacity to complete the Project in accordance with the Schedule and other terms and conditions of this Agreement, Metro may give written notice (with a copy of said notice being given to any lender of Developer) that remedial action must be taken within thirty (30) calendar days. Developer shall correct such breach or default within thirty (30) days after receipt of such written notice. If the default is not reasonably curable within thirty (30) days, then

Developer may continue to cure the default or breach so long as Metro is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the thirty (30) day period, then Metro may terminate the Agreement by giving written notice to Developer at least ten (10) days before the effective date of termination.

**B.** If Developer fails to commence construction of Phase I of the Project on or before September 1, 2017, unless such failure is a result of the MSD Delay, Metro, at its sole option, may demand, in writing, that Developer convey the Property to Metro for one (1) dollar, which is an amount equal to the Purchase Price, as that term is defined in the Option Agreement.

**C.** If Developer fails to commence construction of any phase of the Project other than Phase I in accordance with the Schedule or any Future Schedule, Metro, at its sole option, may demand, in writing, that Developer convey the undeveloped portion of the Property to Metro for the Purchase Price as specified in the Option Agreement.

**D.** If Metro materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Developer may give written notice to Metro that remedial action must be taken within thirty (30) calendar days. Metro shall correct such breach or default within thirty (30) days after Metro's receipt of such written notice. If the default is not reasonably curable within thirty (30) days, then Metro may continue to cure the default or breach so long as Developer is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the thirty (30) day period, then Developer may terminate the Agreement by giving written notice to Metro at least ten (10) days before the effective date of termination.

In the event this Agreement is terminated as described above as a result of a default by (i) Metro, Developer shall be entitled to any remedy and damages available to it at law or in equity, or (ii) Developer, Metro shall be entitled to any remedy and damages available to it at law or in equity. If this Agreement is terminated, such termination shall not in any way affect (i) Developer's rights to any land that it has developed for the Project, (ii) any rights set forth in this Agreement that by their terms survive the termination or expiration, and (iii) any rights that Developer has to portions of the Property on which Developer has begun construction as of the date of termination.

Developer's obligation to convey the Property or any portion thereof as outlined in this Section 3.14A. shall be enforceable by specific performance. In the event of any conveyance of the Property from Developer to Metro after Developer has made improvements to the Property, provided such improvements were not required to be made for purposes of supporting development on the remainder of the Property, Metro agrees to use its best efforts to assist Developer in recouping the cost of those improvements from sales of all or a portion of the Property by Metro to third parties.

**Section 3.15. Binding Effect.** Each of the parties hereto covenants and warrants that (i) it is duly authorized to transact business in the Commonwealth of Kentucky, (ii) the person executing this Agreement on behalf of the party is duly authorized by the party to sign and execute this Agreement on its behalf, (iii) this Agreement is a valid and binding obligation on the

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party and enforceable in accordance with its terms, and (iv) it is the intention of each of the parties to this Agreement that it shall be binding and legally enforceable in accordance with its terms.

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**IN TESTIMONY WHEREOF**, witness the signatures of the authorized representatives of the parties hereto as of the day and year first written above.

**METRO:**

**LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT**

Dated: March 22, 2016

By:


  
Greg Fischer, Mayor

**DEVELOPER:**

**SEED CAPITAL KENTUCKY, INC.**

Dated: March 22, 2016

By:

  
Caroline Heine, Project Director

**Approved as to form:**

Michael J. O'Connell  
Jefferson County Attorney

By:

  
Assistant Jefferson County Attorney

531 Court Place  
Suite 900  
Louisville, KY 40202  
(502) 574-3348

Exhibit A  
to  
Development Agreement

(Attach Legal Description of the Property)

Exhibit B  
to  
Development Agreement  
(Attach Phase I Schematic Design Plans)

Exhibit C  
to  
Development Agreement  
(Attach Insurance Requirements)

Exhibit D  
to  
Development Agreement  
(Attach Option Agreement)